IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4540 of 2006

Shri Vishweshwar Prabhakar Furde Petitioner
Vs.
Shri Arvind Rangappa Waghmare & ors. Respondents

Mr.B.D.Joshi for petitioner.
Mr.R.D.Rane, Government Pleader for resp.nos.2 and 3.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

December 21, 2006.

ORAL ORDER (PER B.H.MARLAPALLE,J.)

1. Heard Mr.Joshi, the learned counsel for the petitioner. The petitioner and the respondent no.1 had contested the elections held in December 2001 for the Municipal Council, Barshi. They had submitted their nominations to contest the seat of councillor against a reserved quota of scheduled caste from Ward No.3-A of Barshi Municipal Council. The petitioner got elected and the respondent no.1 lost the said election. The respondent no.1 lodged a complaint to the respondent - Committee on 23/4/2003. The Committee issued a notice to the petitioner for verification of his caste claim, as per the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and

Verification of) Caste Certificate Act, 2000 and by the impugned decision dated 23/5/2006 the Committee invalidated the petitioner's caste claim as belonging to the caste "Mang" scheduled caste.

2. The Committee had directed a Vigilance enquiry and the Enquiry Officer i.e. the Police Inspector, Vigilance Cell, Pune Region submitted his report dated 4/9/2004. A copy of the said report was forwarded to the petitioner vide the show cause notice dated 20/2/2006. It is submitted by the learned counsel for the petitioner that the Vigilance Cell enquired into the caste of some third person and labelled him as the petitioner's father which cannot be accepted more so when the petitioner had stated in his affidavit dated 1/8/1995 submitted to the Taluka Executive Magistrate that his father Shri Prabhakar Baliram Furde was missing for more than twenty years.

3. The respondent no.1 had in his complaint stated that the petitioner was admitted in the Municipal Boys School No.14 at barshi. His two sisters also studied in the very same school and the petitioner's father Prabhakar Baliram Furde was a resident of village Kantalgaon, Taluka Barshi and he

belonged to the "Maratha" caste.

4. The Vigilance Enquiry Officer visited the village Kantalgaon and enquired with Shri Arun Bhagwan Karde, Sarpanch and Shri Kalyan Laxman Patil, the Police Patil. The Enquiry Officer had also visited the Tahsil Office at Barshi and noted that the caste certificates dated 8/11/2001 were issued on the basis of the certificates issued by the Municipal Boys School and that the petitioner himself had submitted an affidavit before the Taluka Executive Magistrate that his father was missing for more than twenty years or so. In the school record of the petitioner and his sisters as noted by the Enquiry Officer, the father's name was mentioned as Prabhakar Furde and the complainant had stated that Prabhakar Furde was the resident of village Kantalgaon. In the enquiry conducted on 30/7/2004 at village Kantalgaon, the Sarpanch as well as the Police Patil informed the Enquiry Officer that Shri Prabhakar Baliram Furde was alive and his name was entered into the birth register maintained by the Police Patil. It was further revealed that Shri Prabhakar Baliram Furde belonged to the "Maratha" caste and he was not a scheduled caste. On the other hand the petitioner

had submitted the documents pertaining to his mother and a copy of the affidavit dated 1/8/1995 to the Enquiry Officer on 11/9/2003. The Enquiry Officer also called upon the petitioner to submit the details of his father, uncle, grandfather and other blood relations from his father's side but he could not do so. The Enquiry Officer, therefore, in his report dated 4/9/2004 recorded the following findings:

(a) Undisputedly the petitioner's father's name was Prabhakar Baliram Furde.

(b) Prabhakar Furde was the resident of village Kantalgaon and he was alive at the time of enquiry.

(c) Prabhakar belonged to "Maratha" caste and not the "Mang" caste.

(d) The petitioner's mother was born in the "Mang" caste and she was married to Prabhakar Furde who was staying in his village and the petitioner's mother was staying at Barshi.

(e) Petitioner had filed a false affidavit on 1/8/1995 before the Taluka Executive Magistrate stating his father was missing for the last more than twenty years or so. And

(f) That the petitioner could not claim to belong to the "Mang" caste and in fact he belongs to the "Maratha" caste.

5. On receipt of the show cause notice dated 20/2/2006 the petitioner did not take a plea that Shri Prabhakar Baliram Furde, resident of village Kantalgaon was not his father and that the said person was an alien and had no relationship with the petitioner. It is for the first time in the oral arguments advanced by the learned counsel for the petitioner such a plea is taken. We have scanned through the averments made in the petition memo and such a plea is not incorporated in the same. Even when the petitioner appeared before the Scrutiny Committee after receipt of the Vigilance Cell Enquiry report, he did not take such a stand which is apparent from the impugned decision. Though the petitioner's mother came from the scheduled caste, she having married to Prabhakar Baliram Furde who

belonged to the Maratha caste, the children from this wedlock would not derive their caste claim on the basis of the mother's caste. In fact and in law they would derive their caste from their father. Hence the petitioner's caste is "Maratha" which is the caste of his father and his claim that he belongs to the "Mang" caste has been rightly turned down by the respondent - Committee on the basis of the Vigilance Enquiry report.

6. We have also noted that the Vigilance Officer conducted the school enquiry as well as the domestic enquiry and he ascertained the name of the petitioner's father as written in the school record and on the basis of the information furnished by the respondent no.1 that the petitioner's father was a resident of village Kantalgaon, the Enquiry Officer visited the said village, went through the birth register and after noticing the name of Prabhakar Furde in the said register, made enquiries with the Sarpanch and Police Patil regarding the said person. The principles of natural justice have been duly followed in the enquiry conducted by the Vigilance Officer and the adjudication done by the Scrutiny Committee in the impugned decision while verifying

the petitioner's caste claim.

7. Under the circumstances, the petitioner's challenge to the Committee's decision dated 23/5/2006 fails at the threshold. Hence the petition is rejected summarily.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)